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*Of Attorneys for Amici Curiae Washington County  
District Attorney, Clackamas County District Attorney,  
and Marion County District Attorney*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

DISABILITY RIGHTS OREGON,  
METROPOLITAN PUBLIC DEFENDER  
SERVICES, INC., and A.J. MADISON,

Plaintiffs,

v.

PATRICK ALLEN, in his official capacity as  
head of the Oregon Health Authority, and  
DOLORES MATTEUCCI, in her official  
capacity as Superintendent of the Oregon State  
Hospital,

Defendants.

3:02-cv-00339-MO (Lead Case)

3:21-cv-01637-MO (Trailing Case)

**MOTION FOR LEAVE TO APPEAR AS  
AMICI CURIAE BY THE DISTRICT  
ATTORNEYS FOR WASHINGTON,  
CLACKAMAS, AND MARION  
COUNTIES**

JARROD BOWMAN, JOSHAWN  
DOUGLAS-SIMPSON,

Plaintiffs,

v.

DOLORES MATTEUCCI, Superintendent of  
the Oregon State Hospital, in her individual  
and official capacity, PATRICK ALLEN,  
Oregon Health Authority, in his individual and  
official capacity,

Defendants.

### **CERTIFICATE OF COMPLIANCE WITH LR 7-1**

Pursuant to LR 7-1(a), undersigned counsel certifies that his co-counsel, Billy Williams, has reached out, by telephone and email, to counsel for the parties in the above-titled action to confer in good faith with regard to this Motion to Appear as *Amici Curiae* by Washington County District Attorney, Clackamas County District Attorney and Marion County District Attorney (“The District Attorneys”). *See* Declaration of Billy J. Williams. Counsel for Defendants indicated their clients do not oppose the motion to appear as *amici curiae*. Counsel for Plaintiff Disability Rights Oregon, Metropolitan Public Defender, Jarod Bowman, and Joshawn Douglas-Simpson have indicated their clients do oppose this motion. *Id.*

### **MOTION**

The District Attorneys move this Court for an order allowing them to appear and participate as *amici curiae* in this action. The District Attorneys seek leave to file an amicus brief

and to participate in any hearing in this matter.<sup>1</sup> The motion is supported by the court file and the memorandum that follows.

## MEMORANDUM IN SUPPORT

### I. LEGAL STANDARD.

District courts have broad discretion to appoint amicus parties. *See Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). “The classic role of amicus curiae ... [is to assist] in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.” *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). Key to a decision to allow amici participation is the question of whether it would be helpful, and “there is no rule that amici must be totally disinterested.” *Funbus Systems, Inc. v. State of Cal. Public Utilities Comm’n.*, 801 F.2d 1120, 1125 (9th Cir. 1986). A decision to appoint amicus curiae may be reversed only for abuse of discretion. *Hoptowit*, 682 F.2d 1237 at 1260.

### II. THE COURT SHOULD ALLOW THE DISTRICT ATTORNEYS TO APPEAR AS AMICI CURIAE IN THIS ACTION.

The District Attorneys are elected public officials serving as the chief law enforcement officers for each of their respective counties; they represent the public in criminal justice prosecutions in accordance with the Oregon Constitution and state law. ORS 8.610; 8.630. The District Attorneys bring criminal charges on behalf of the State of Oregon, promoting the

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<sup>1</sup> The District Attorneys reserve the right to file a future motion to intervene in this action if they determine that doing so is necessary to protect their interests.

public's interest in safety and justice, and ensuring the constitutional rights of crime victims are upheld. *See generally* Oregon Const., Art. I, §§ 42, 43.

District Attorneys engage in a complex decision-making process that has a direct impact on the entire criminal justice system, including the aspect at issue in this litigation. The cases at issue here all begin with charges brought by a prosecutor, and the prosecutor heavily influences each case through plea negotiations, trial, and sentencing. Any judicial remedy will directly impact the role of prosecution, and the role of prosecution will in turn impact the effectiveness of any judicial remedy. An order, for example, that contemplates the release of individuals charged with criminal offenses must be issued with due consideration to the role of prosecution, public safety, and law enforcement in supervising such a release.

Although remedies imposed in this action will significantly impact each of the vital interests in public safety, justice, and victim's rights, the voice of the prosecutor is currently not represented in this action. The perspective of the District Attorneys is distinct from that of the Oregon Department of Justice, whose jurisdiction and interests extend across Oregon and who in this matter represent the state's public health institutions. Nor will the interests of the District Attorneys be represented through an *amici* appearance by Washington and Marion Counties, whose experience and knowledge is not centered on criminal justice, public safety, and victim's rights.

To address the critical issues raised by this litigation, all stakeholders—including the prosecution—must be convened. The District Attorneys offer the Court special knowledge and experience, central to the criminal justice process at issue here, that will be essential to finding a durable solution.

**III. CONCLUSION.**

The District Attorneys have unique interests implicated by this action, as well as a perspective not shared by other participants to the litigation. Their participation as *amici* will assist the Court in understanding the critical issues raised herein and in fashioning a remedy that considers the vital interests in public safety, justice, and victim's rights. For those reasons, The District Attorneys respectfully request that they be allowed to appear and participate as *amici curiae* in this action.

Respectfully submitted.

Dated: August 26, 2022

BEST BEST & KRIEGER LLP

By: s/ Josh Newton

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Washington County District Attorney,  
Clackamas County District Attorney, and  
Marion County District Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2022, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Oregon via the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system.

BEST BEST & KRIEGER LLP

*s/ Josh Newton*

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